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Hacking a website does not constitute a criminal offence (Argentina) ?

Keuleers, Ewout; Verbiest, Thibault

Published in:

<http://www.droit-technologies.org>

Publication date:

2002

Document Version

Publisher's PDF, also known as Version of record

[Link to publication](#)

Citation for pulished version (HARVARD):

Keuleers, E & Verbiest, T 2002, 'Hacking a website does not constitute a criminal offence (Argentina) ?', <http://www.droit-technologies.org>. <<http://www.droit-technologies.org>>

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PRESENTE:

Hacking a website does not constitute a criminal offence (Argentina)

28 Mai 2002

Auteur: [Ewout Keuleers](#) (Avocat au barreau de Bruxelles - Cabinet ULYS)

Thème: Criminalité et droit pénal

URL: http://www.droit-technologie.org/1_2.asp?actu_id= 593

On the 22nd of March 2002, the Argentine Federal Criminal Court N° 12 declared that the incriminated members of an Argentine hacking group, the so-called X-team, could not be condemned for breaking into the Supreme Court's (Corte Supremo) website.

At the first anniversary of the murder of the journalist Jose Luiz Cabezas, who was at the time investigating a corruption scandal in which the former President was alleged to be implied, the members of the X-team on the 26th of January 1998, entered the website of the Supreme Court, leaving behind photos of the murdered journalist and statements accusing the judges of a cover-up operation.

After a thorough investigation, in which the State Intelligence Service and a special department of the Federal Argentine Police were implied, five persons, in cyberworld known as Bash, Kurt, None, Quato and Tommy Tomato, were arrested and criminal charges were brought against them.

However, the first Argentine case against computer hackers wound up in an unpredictable way, at least for the Public Prosecutor.

The material facts of the case could be legally qualified as infringing articles 183 and 184, 5° of the Criminal Code. Article 183 CC punishes everybody who destructs, renders something not usable, makes something disappear or inflicts damages to a thing or an animal with a prison sentence from 15 days to 1 year. If the same actions are committed against things belonging to the Public Property, such as public libraries, musea, archives, etc., the sanctions, in application of article 184, 5° Criminal Code are imprisonment from 3 months to 4 years.

Considering that the Supreme Court's website was defaced, Federal judge Sergio Torres held that by changing the nature, the appearance or characteristics of the website, damages were inflicted.

Although the facts principally fell within the scope of the mentioned criminal dispositions, the Court wondered whether a website could be legally considered a 'thing'.

By virtue of article 2311 of the Argentine Civil Code only material objects with a certain value are considered as things. Seen the immaterial nature of a website, it cannot be legally considered as a thing. In addition the Court noted that, seen the principle of

legality as contained in article 18 of the Argentine Constitution, it could not adopt an interpretation of that concept, allowing to bring a website within its scope of application.

By saying “Hecho investigado, no encuadra en figura legal alguna no constituye delito”, judge Torres not only ruled that hacking was not illegal by default, but he also indicated that there was a clear legal void in Argentine law, making it hard to prosecute cybercrimes.

L'actualité peut être réutilisée à condition d'en mentionner la provenance:

*Ewout Keuleers, "Hacking a website does not constitute a criminal offence (Argentina)",
http://www.droit-technologie.org/1_2.asp?actu_id= 593 , 28 Mai 2002*

"Droit et Nouvelles Technologies" - Avenue Vanden Thoren 80 - 1160 Bruxelles - Belgique
Tél. c/o Thomas Parvais & Etienne Wéry : +32 (0)2 340 88 10 - Email: info@droit-technologie.org

